

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

GERRY MONROE,

Plaintiff

v.

HOUSTON INDEPENDENT  
SCHOOL DISTRICT,

Defendant

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Civil Action No. H-19-1991

**DECLARATION OF DAVID KAHNE  
IN SUPPORT OF PLAINTIFF’S MOTION FOR ATTORNEY FEES**

I, David A. Kahne, make the following sworn declaration pursuant to 28 U.S.C. 1746, based on personal knowledge (except as otherwise stated) in support of Plaintiff’s Motion for Attorney Fees, Costs, and Expenses in the above-captioned case.

**QUALIFICATIONS**

1. I have been a lawyer for more than three decades. Starting in Pennsylvania (1987), then in Texas (1994), I always have been licensed and practicing law. Most of my practice has been in Texas, based in Houston, for the past quarter century.

2. Throughout my career, I have been continuously active as a civil litigator, in federal as well as state courts. From 1987 until 1994, I worked primarily on complex litigation for businesses and individuals, including matters of constitutional law and civil rights, as well as commercial class actions (including antitrust) and other high stakes litigation. Since moving to Texas, I have continued to bring constitutional law cases, with an expanded focus on protecting property rights and civil liberties.

3. I have been a member in good standing of the Bar of the Southern District of Texas since 1994. I also have for many years been a member of the Bar of the United States Supreme Court, the United States Court of Appeals for the Fifth Circuit, and other districts across Texas. My resume is attached as Exhibit A.

#### **Education & Clerkships**

4. I graduated from Harvard Law School (*cum laude*, 1984). While there, I served as an editor of the Harvard Journal on Legislation and Director of the Legislative Research Bureau.

5. From 1984 to 1985, I clerked for the Honorable Alan B. Handler, Justice of the New Jersey Supreme Court (the highest Court of that state).

6. From 1985 to 1987, I clerked for the Honorable John P. Fullam, Chief Judge of the United States District Court for the Eastern District of Pennsylvania.

#### **Private Practice**

7. From 1987 until 1994, while working at the law firm then known as Fine, Kaplan & Black, much of my work comprised commercial class actions. For example, I served as co-lead counsel in *Sutton and Levy v. Pennsylvania Blue Shield et al.*, in which the court approved the \$3.7 million attorney fees payment and expressly found the “quality of plaintiffs’ counsel’s effort was extraordinarily good.” 1994 U.S. Dist. LEXIS 7512 (E.D.Pa.) at \*23. My practice also included significant constitutional litigation. *E.g.*, *Alliance for the Mentally Ill v. White*, 90-6389 (E.D.Pa.) (lead counsel, ending rationing of clozapine, a drug singularly useful to treat persons with schizophrenia, in Pennsylvania mental hospitals); *Gentry v. City of Philadelphia*, 91-09-5805 (C.C.P. Pa.) (enforced rights for commercial free speech).

8. Upon moving to Houston, from 1994 to 1998, I served as the Legal Director for the Clark Read Civil Liberties Foundation, bringing multiple constitutional law and statutory

claims. *E.g.*, *Brentwood Economic Community Development Corporation v. City of Houston*, H-95-0168 (S.D.Tex.) (representing Brentwood Baptist Church to obtain more than \$600,000 for the construction of permanent housing and social services).

9. Since 2006, my practice has expanded in the protection of real property rights, often using constitutional law. For example, in *White v. Jefferson County Drainage District*, 07-181 (E.D.Tex.), I developed constitutional law (freedom of speech) claims for three ranch owners who had been sued personally, for millions of dollars, after they protested government action that threatened their property; they prevailed in the resulting settlement that secured both improvements in the government plans and recovery of their attorney fees.

10. My practice also includes the representation of homeowners in disputes with association and condominium boards. That began when I presented constitutional as well as statutory claims for Geneva Kirk Brooks, securing her rights to protest against increases in assessments, increases that the Texas Supreme Court ultimately held were unlawful. *Brooks v. Northglen Ass'n*, 141 S.W.3d 158 (Tex. 2004) (lead counsel). Free speech protection is often required in my cases to secure homeowner rights. *See also, e.g., Windsor Village Civic Club, Inc. v. Lucas*, No. 2018-19940 (129<sup>th</sup> Dist., Harris County) (lead counsel, successful defense of homeowner's freedom to criticize her Civic Club, using Texas' anti-SLAPP statute).

11. In addition to First Amendment rights, I have used principles of due process and equal protection in cases to protect large land owners, small businesses, owners of multi-family apartments, and individuals victimized of government overreach. These can be complex cases.

#### **Non-Profit Activities**

12. I also have experience with non-profit organizations actively engaged in the protection of First Amendment rights. Currently, since 2013, I have been a director on the Board

of the Freedom of Information Foundation of Texas (“FOIFT”), where I have served on its Legislative Committee and reviewed many briefs submitted on its behalf. FOIFT often asserts First Amendment principles in litigation, with briefs written by lawyers who represent members of the press in their private practices, paid on an hourly basis. Previously, from 1998 until 2006, I served on the Board of Directors of the American Civil Liberties Union (“ACLU”) of Texas, and on its legal committee. I chaired the ACLU Statewide legal committee from 2000 until 2004. In both of these capacities, I have reviewed and discussed litigation with some of the leading litigators in Texas who assert First Amendment claims.

### **BASES FOR MY OPINIONS**

13. Based on my above-described experience in and around the Southern District of Texas, conversations with skilled lawyers, and study of attorney fee decisions, periodic attorney fees surveys, and attorney fee testimony, I know about usual and customary rates for this type of litigation in this District. Those rates typically reflect the experience and skill of the attorneys involved, as well as the complexity of the matter. From this I also know other considerations relevant to determine whether attorney fees are reasonable, mostly the amount of time reasonably required, which depends on the facts and law in dispute. See 42 U.S.C. 1988.

14. I am familiar with the legal work of Mr. Newar, as one of very few lawyers in this area who regularly bring contingent fee cases to enforce First Amendment rights. Due to my professional interest, I have read some of Mr. Newar’s briefs in other cases, as well as briefs in this case, and I have participated in moot court appellate arguments with Mr. Newar (though not on this case). I have no economic interest in common with Mr. Newar, nor any in this case.

15. I also have reviewed opinions by this Court and the Fifth Circuit Court of Appeals, the fee petition, and time records supplied by Mr. Newar (attached as Exhibit B).

## OPINIONS

16. For Mr. Newar's work in this case, \$500 per hour is a reasonable hourly rate.

17. For the tasks shown as being done on his records (in Exhibit B), the time spent by Mr. Newar is reasonable.

### **This case required a skilled lawyer with particular expertise.**

18. My experience confirms the extraordinary difficulties that frequently arise in First Amendment litigation. Many constitutional cases have the potential to be difficult. First Amendment cases, even when a client is popular, frequently involve complex and extended proceedings. A skilled lawyer if required, and that is even more true for contentious clients, as appears to be the case here.

19. The doctrinal complexity of this case is reflected in decisions by this Court, and the Court of Appeals for the Fifth Circuit. There were multiple close and difficult questions and, after careful analysis, against the backdrop of evolving First Amendment law, this Court initially ruled against Plaintiff. It was by no means clear that Plaintiff would win anything.

20. Factually, this case likewise presented significant challenges. This Court's initial opinion highlighted statements by Plaintiff that, while ultimately found to be protected speech, were aggressive and near the border of an active threat. It was by no means a certainty that the Court of Appeals would find Plaintiff had rights notwithstanding what he said.

21. The case also involved procedural complexities, due to several changes of position by Houston Independent School District ("Houston ISD"). A moving target is hard to hit. Counsel needed attentive application of law to fact to obtain the preliminary injunction.

22. Moreover, Houston ISD persistently and skillfully advocated for its position. All this means that a skilled lawyer was required to prevail by concisely presenting facts and law.

**It is difficult to locate qualified counsel for such contingent fee cases.**

23. To secure free speech rights requires highly skilled and dedicated counsel for two important reasons. First, the complexity and length of cases makes them difficult, as described above. Second, the importance of protecting these freedoms requires that the issues be presented well. Individual cases frequently have impact beyond the parties named in the case.

24. Corporations that publish news can afford to pay hourly rates for skilled counsel. Individuals typically cannot, and it is difficult to locate skilled lawyers who will take a case such as this on a fully contingent fee basis. Lawyers who represent the media, and would be qualified to take on such a case, frequently will not do so, in part to avoid becoming part of the news that their clients cover. I am aware that hourly rates are not to be increased because a case is taken on a contingent fee basis, but lawyers who take such cases should be compensated at rates akin to those paid on an hourly basis.

**Mr. Newar's work product is excellent.**

25. Mr. Newar's experience puts him in a rare class of Texas lawyers, those who have won multiple cases enforcing First Amendment rights. His briefs reflect excellent work.

26. Mr. Newar ultimately secured the changed practices sought by his client, after obtaining some interim changes along the way. Given the uncertain, developing state of the law, and some difficult facts, this is a tribute to Mr. Newar's skill.

27. Accordingly, I conclude that \$500 per hour is a reasonable hourly rate for Mr. Newar. I also conclude that the amount of time he worked on tasks in this case is reasonable.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 3, 2021.

/s/ David A. Kahne

# EXHIBIT

# A

## **LAW OFFICE OF DAVID A. KAHNE**

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P.O. Box 66386 • Houston, Texas 77266 • 713-652-3966 • davidakahne@gmail.com

### **RESUME OF DAVID A. KAHNE**

#### **Professional**

1994-	LAW OFFICE OF DAVID A. KAHNE civil litigation, focusing on civil and property rights, and counselor to community groups on related issues	Houston, TX
1994-98	CLARK READ CIVIL LIBERTIES FOUNDATION, INC. legal director, litigating civil rights and civil liberties cases, and counselor to community groups on related issues	Houston, TX
1987-94	FINE, KAPLAN AND BLACK civil litigation, including plaintiffs' class actions, with independent civil rights and civil liberties practice	Philadelphia, PA
1987-94	COMMITTEE FOR DIGNITY AND FAIRNESS FOR THE HOMELESS HOUSING DEVELOPMENT, INC. general counsel to non-profit developer of housing and provider of services for 125 formerly homeless families	Philadelphia, PA

#### **Law Clerk**

1985-87	CHIEF JUDGE FULLAM, U.S. District Court	Philadelphia, PA
1984-85	JUSTICE HANDLER, New Jersey Supreme Court	Trenton, NJ

#### **Education**

1981-84	HARVARD LAW SCHOOL, J.D. <i>cum laude</i> editor, <u>Harvard Journal on Legislation</u> director, Legislative Research Bureau	Cambridge, MA
1977-80	HARVARD COLLEGE, A.B. <i>summa cum laude</i> degree in applied mathematics Phi Beta Kappa and John Harvard Scholar	Cambridge, MA
1976-77	MASSACHUSETTS INSTITUTE OF TECHNOLOGY matriculated, then transferred to Harvard	Cambridge, MA

September 2021

# **EXHIBIT**

# **B**

*Scott Newar, Attorney at Law*

September 3, 2021

440 Louisiana, Suite 900

Houston, Texas 77002

Ph. 713-226-7950

Fax: 713-226-7181

*Gerry Monroe v. Houston Independent School District, No. 4:19-cv-1991*

Date	Description	Hours	Amount	Billed
5/22/2019	T/C w/Gerry Monroe; emails to/from Monroe; review of case documents	0.5		\$250.00
5/23/2019	Review of video of 4/11/19 Board meeting; emails to/from GM	0.5		\$250.00
5/24/2019	Emails to/from GM (re: witnesses)	0.25		\$125.00
5/28/2019	Review of GM case summary; email to/from GM (re: case summary)	0.75		\$375.00
6/1/2019	Legal research (case law) re: HISD constitutional violations and review of HISD Board meeting policies/procedures/videos	6.5		\$3,250.00
6/2/2019	Legal research (case law) re: HISD constitutional violations and draft lawsuit	7.25		\$3,625.00
6/3/2019	Revise and file lawsuit; draft and email representation agreement; T/C w/Monroe (re: rep agreement; explained expense issue)	4.5		\$2,250.00
6/4/2019	T/C w/Cecilia Edwards; T/Cs w/Monroe; Research, draft, file First Amended Complaint	3		\$1,500.00
6/5/2019	Research/Draft letter to HISD counsel re: TRO/PI; review Harrington correspondence w/Hutchins-Taylor	1.5		\$750.00

6/6/2019	Review of videotapes of HISD Board meetings	1.75	\$875.00
6/7/2019	Review of HISD board meeting videos; mtg. w/GM (Starbuck's: 2.0); review of Nichols' letter; T/C w/GM (re: Nichols letter):	3.5	\$1,750.00
6/8/2019	Email to Nichols	0.1	\$50.00
6/9/2019	Legal research re: TRO/PI and "prior restraint"	4.5	\$2,250.00
6/12/2019	Prep. For hearing with Court re: expedited PI/expedited discovery; hearing w/Court (re: expedited hearing/discovery); T/C w/GM (re: status)	2.5	\$1,250.00
6/15/2019	Research/draft PI Memorandum; draft witness subpoenas	6.5	\$3,250.00
6/16/2019	Research/draft Memorandum re: PI	7.5	\$3,750.00
6/17/2019	Research/draft Memorandum re: PI; Review D's discovery responses; emails to Nichols/Karson (re: Interrog response; service; motion to exceed page limits	10	\$5,000.00
6/18/2019	Draft/Edit P.I. Memorandum; draft Motion To Exceed Page Limits; emails to/from Nichols (re: motion to exceed); review of court Order denying Motion To Exceed Page Limits; review of Court's internal procedures re: briefs; review of Court's decisions re: motions to exceed page limits; mtg. w/paralegal (O'Brien) to discuss hearing preparation; T/C w/GM re: amended Memorandum; draft Amended Memorandum; T/C w/Rhonda Booker (witness); T/C w/counsel (Gary from Dallas) re: Werlein trial techniques/requirements; research re: exhaustion of administrative remedies under section 1983	8.5	\$4,250.00

6/19/2019	revise Amended P.I. Memorandum; T/C s w/paralegal (re: Amended Memorandum); T/C w/Monroe (re: subpoena status); T/C w/HPD re: Chief Finner	4.75	\$2,375.00
6/21/2019	Review D's Response to Interrogatories; emails to/from Karson Thompson (re: D's Interrogatory Response and re: D's proposed stipulations); review D's P.I. Memorandum; Research and draft response to D's PI Memorandum	8.75	\$4,375.00
6/22/2019	Research and draft Response to HISD's PI Memorandum	10.25	\$5,125.00
6/23/2019	Draft direct examinations of GM; mtg. w/GM (@ Carl's Jr.; review and prepare for Direct examination); draft cross-examination of HISD	12	\$6,000.00
6/24/2019	Preparation for PI hearing (draft Witness List; draft Exhibit List; review D's Exhibit and Witness Lists; meet w/paralegal to organize exhibits; draft Cross-Examination of HISD witnesses; revise direct exam of GM, Trinh, McKinzie, Boykins; attend P.I. hearing (mtg. in chambers w/Court); post-hearing mtg. w/GM and T/C re: status	10	\$5,000.00
6/27/2019	Receipt/review HISD's settlement proposal; email to GM; T/C w/GM	0.75	\$375.00
6/28/2019	Emails to/from Nichols (re: HISD settlement offer; supplemental Interrogatories)	1.25	\$625.00
6/30/2019	Confer with GM re: HISD settlement proposal; draft counter-proposal and email to Nichols	3	\$1,500.00
7/2/2019	Preparation for and hearing before Mag. Stacy (re: expedited discovery)	1	\$500.00
7/8/2019	Draft/File Amended Exhibit List	0.5	\$250.00

7/9/2019	Preparation for 7/11/19 hearing (T/C w/Sara Selber; T/C w/Larry McKinzie; review McKinzie video of 4/24/18 Board meeting; draft/file First Amended Exhibit/Witness lists; review D's supplemental response to Interrogatories; emails to Nichols; draft/revise direct/cross examinations)	10.5	\$5,250.00
7/10/2019	Preparation for 7/11/19 hearing (review D's 7/10 letter to Monroe; T/Cs w/Monroe re: 7/10/19 letter; T/C w/Dennis Herlong re: 7/10/19 letter; legal research re: 7/10/19 letter; draft/revise direct/cross-examinations; Review D's amended exhibit/witness lists)	11.25	\$5,625.00
7/11/2019	Preparation for P.I. hearing; P.I. Hearing; post-hearing conversation with client/DH	14.5	\$7,250.00
7/15/2019	Review D's post-hearing filing; research/draft Post-Hearing Memorandum	3.5	\$1,750.00
7/18/2019	Research/draft Addendum to Post-Hearing Memorandum; email to Judge Werlein's Case Manager (re: Addendum filing)	1.5	\$750.00
7/19/2019	Review of Memorandum and Order; research re: appeal; TC w/GM (re: status/appeal)	2.5	\$1,250.00
7/20/2019	Research re: appeal; draft notice of appeal; Emails to/from DH (re: appeal)	9	\$4,500.00
7/21/2019	Research re: appeal	1.25	\$625.00
7/22/2019	Research re: 5th Cir. Local Rule re: motion to expedite appeal; Email to Nichols (re: expedited appeal)	0.3	\$150.00
7/23/2019	Legal research re: Supreme Court cases re: content/viewpoint discrimination	1	\$500.00
7/24/2019	Draft Motion for Expedited Appeal	3.75	\$1,875.00
8/2/2019	Review D's Response to Motion for Expedited Appeal	0.75	\$375.00

8/4/2019	Research/draft Reply to Response to Mot Exped Appeal	3.25	\$1,625.00
8/5/2019	Revised Reply to Response to Mot Exped Appeal and file	0.5	\$250.00
8/6/2019	Emails/TC w/GM (re: HISD non-compliance with revised ban); Email to Nichols (re: HISD non-compliance with revised ban)	0.5	\$250.00
8/8/2019	Emails to/from Nichols (re: HISD non-compliance with revised ban)	1	\$500.00
8/12/2019	Email to Nichols (re: HISD continued non-compliance with revised ban); research draft Emergency Motion to Enforce And For Sanctions)	4.25	\$2,125.00
8/13/2019	Draft/File Motion for Expedited Hearing and proposed Order	0.5	\$250.00
8/16/2019	Email to Court (re: 8/20/19 reply date re: Motion to Enforce)	0.1	\$50.00
8/19/2019	Review D's Response to Motion To Enforce; Research/draft Reply re: Motion to Enforce; T/C w/GM (re: Reply to Motion to Enforce); review 5th Cir briefing notice	2.5	\$1,250.00
9/6/2019	Review of record re: draft appeal	5	\$2,500.00
9/7/2019	Review of record and draft appeal	6.5	\$3,250.00
9/8/2019	Research and Draft appeal	7.25	\$3,625.00
9/9/2019	Research and Draft appeal	8.5	\$4,250.00
9/10/2019	Research and Draft appeal	9.25	\$4,625.00
9/11/2019	Research and Draft appeal	11.5	\$5,750.00
9/16/2019	Draft/Revise Appellant's Brief	10.25	\$5,125.00
9/17/2019	Draft/revise Appellant's Brief	10.75	\$5,375.00
9/18/2019	Draft/revise Appellant's Brief; draft Record Excerpts	11.25	\$5,625.00
9/21/2019	Review CA5 corrections and correct brief	1.25	\$625.00

10/8/2019	Review of D's Appellee's Brief; email to/from DH	0.5	\$250.00
10/10/2019	Review D's Appellee's Brief; research/draft Reply Brief	10.5	\$5,250.00
10/11/2019	Review D's Appellee's Brief; research/draft Reply Brief	10.25	\$5,125.00
10/12/2019	Research/Draft Reply Brief	6.25	\$3,125.00
10/13/2019	Research/Draft Reply Brief	6.5	\$3,250.00
10/14/2019	Research/Draft Reply Brief	2.5	\$1,250.00
10/15/2019	Research/Draft Reply Brief	2.25	\$1,125.00
10/17/2019	Revise Reply Brief	2.75	\$1,375.00
10/18/2019	Revise/File Reply Brief	1	\$500.00
10/20/2019	Preparation for oral argument(research re: "chilling" speech)	0.75	\$375.00
10/30/2019	Oral Argument preparation (DH; KH; MF)	2.5	\$1,250.00
11/3/2019	Preparation for oral argument (New Orleans)	5.5	\$2,750.00
11/4/2019	Preparation for oral argument (New Orleans CA5)	9.5	\$4,750.00
11/5/2019	Preparation for oral argument and oral argument; post-hearing updates w/GM, DH, et al	8.5	\$4,250.00
11/6/2019	Rule 28j letter to Court (re: HISD Board meeting; Oldham queries)	1.5	\$750.00

11/25/2019	Review CA5 decision; T/C w/Herlong re: decision; T/C w/Trachtenberg (re: decision); T/C w/client (re: decision); email decision to client; email to Nichols (re: motion for expedited hearing on PI hearing); draft Second Amended Complaint; Draft Motion for Leave to File Second Amended Complaint; Draft Amended Motion for PI; Draft Motion for Expedited Hearing re: second PI hearing; research re: mootness (capable of repetition)	3.5	\$1,750.00
11/26/2019	Research/Draft/File 2nd Amended Complaint; Motion for Leave to File 2nd Amended Complaint; Motion for Expedited Hearing; Amended Motion for PI; proposed Orders; emails to/from Nichols (re: conference on pleadings)	5	\$2,500.00
11/27/2019	Email to Court (re: hearing on Amended Motion for PI); T/C w/GM (updated re: status); review of Court's 11/27/19 Order; email to Herlong (re: status)	1.25	\$625.00
11/30/2019	Research/Draft 2nd Amended Motion for PI	4.75	\$2,375.00
12/1/2019	Research/Draft 2nd Amended Motion for PI and Declaration of GM; T/C w/GM (update re: status)	6.25	\$3,125.00
12/2/2019	Revise/Draft 2nd Amended Motion for PI; review Court Order granting motion for expedited hearing	1.5	\$750.00
12/3/2019	Emails to/from Nichols (re: settlement negotiations); emails to/from DH (re: settlement negotiations); T/C w/GM (re: hearing preparation; will email me documents re: attempts to go to campus); Email to Candice (re: exhibit book)	1	\$500.00
12/6/2019	Review HISD's Response; research Reply	3.5	\$1,750.00

12/7/2019	Research/Draft Reply to HISD's Response; emails to/from DH (re: Reply); email to Nichols (re: issue to be decided at 12/10/19 hearing); revise draft Reply	5.5	\$2,750.00
12/8/2019	Research/finalize Reply to HISD's Response	2.5	\$1,250.00
12/9/2019	Draft/File Issues For Adjudication; proposed Order (re: 2nd PI); Exhibit List; Witness List; review D's Exhibit List, Witness List, and Statement of Issues; Emails to/from Nichols (re: exhibits); mtg w/GM (re: hearing preparation; draft direct examination of GM; draft cross examination of Tonnis Hilliard; review our exhibits	8	\$4,000.00
12/10/2019	Preparation for 2nd Amended PI hearing; 2nd Amended PI hearing; T/C w/Monroe (re: hearing assessment); meeting w/DH (re: hearing assessment)	3	\$1,500.00
12/11/2019	Review Court's Memorandum re: 2nd Amended PI; emails to/from Herlong (re: decision); T/C and text messages w/client (re: decision); research re: posting bond; research re: potential CA5 appeal; research re: "prevailing party" status under 42 USC 1988	4.5	\$2,250.00
12/12/2019	Draft email to Nichols re: settlement and T/C w/DH (re: settlement proposal)	1.25	\$625.00
12/19/2019	Email to Nichols (re: Joint Case Management Plan)	0.2	\$100.00
2/4/2020	Draft CMP and email to Nichols	0.5	\$250.00
2/6/2020	Review Nichols' changes CMP; revise CMP; file revised CMP	0.3	\$150.00
2/14/2020	Rule 16 status conference with Court; post-conference discussion with DH; post-conference T/C w/Monroe	1.25	\$625.00
4/3/2020	Receipt/review of D's Expert Witness disclosure	0.1	\$50.00

4/5/2020	Legal Research/Draft MSJ; email to D's Counsel (re: Plaintiff's attorney fees designation)	5.9	\$2,950.00
4/6/2020	Research/Draft MSJ	4.5	\$2,250.00
4/8/2020	Review Nichols' email and HISD letter to Monroe; T/C w/Herlong; T/C w/Monroe; draft/email to Nichols (response to letter); Legal research re: mootness/MSJ	4.25	\$2,125.00
4/10/2020	Review of 5 <sup>th</sup> Circuit oral argument (re: Nichols' argument re: "derogatory" and "offensive") in preparation for MSJ/Mootness arguments	0.5	\$250.00
4/11/2020	Review transcript of 12/11/19 hearing and Revise draft of Motion for Partial MSJ	3.75	\$1,875.00
4/12/2020	Revise draft of Motion for Partial MSJ and draft proposed Order	1.25	\$625.00
4/13/2020	Revise MSJ; draft Motion to Exceed Briefing Page Limit (w/proposed Order); email to Nichols (re: confer re: Motion to Exceed)	4.75	\$2,375.00
4/14/2020	Revise MSJ	1	\$500.00
4/15/2020	Review HISD's response to Motion to Exceed Briefing Page limits; review of Nichols' related email; email to Dennis and T/C w/Dennis (re: HISD's response); email to Nichols (re: settlement)	1.75	\$875.00
4/18/2020	Draft Reply to HISD response to Motion to Exceed Briefing Page Limit; email to DH; review DH comments re: Motion to Exceed	1	\$500.00
4/20/2020	Legal research re: mootness and revise and file Reply to HISD response to Motion To Exceed Briefing Page Limit; email to DH	1.25	\$625.00
4/28/2020	Legal research re: mootness (5 <sup>th</sup> Circuit recent opinion) and revise outline for MSJ reply brief	0.5	\$250.00

5/11/2020	Review D's Response to Motion for MSJ and legal research re: cases cited in Response	3.5	\$1,750.00
5/12/2020	Legal research re: mootness exceptions and draft MSJ Reply	9.5	\$4,750.00
5/13/2020	Draft and revise MSJ Reply	5.75	\$2,875.00
5/14/2020	Revise MSJ Reply and draft Declaration re: MSJ Reply	5.25	\$2,625.00
6/30/2020	Review D's Motion for Summary Judgment and research Reply	1.25	\$625.00
7/3/2020	Research/draft response to HISD's Motion for Summary Judgment; email to DH (re: Response to MSJ)	5.25	\$2,625.00
7/4/2020	Research/revise Response to HISD's MSJ	1	\$500.00
7/6/2020	Review/Revise Response to HISD's MSJ	0.5	\$250.00
8/25/2020	Email to Nichols (re: contacting Court re: case status)	0.1	\$50.00
8/27/2020	Email to Nichols (re: contacting Court re: JPTO/Docket call extension); Emails to/from Case Manager (Flores) re: case status	0.3	\$150.00
8/31/2020	Draft Joint Motion for Extension of JPTO/Docket Call; email to Nichols	0.5	\$250.00
9/1/2020	Review Nichols' revisions to draft Motion for Extension of JPTO/Docket Call; draft revised Joint Motion; draft proposed Order	0.4	\$200.00
10/25/2020	Legal research re: mootness	0.4	\$200.00
11/26/2020	Review of USCT decisions re: mootness	0.5	\$250.00

2/12/2021	Preparation for Status Conference w/Court; attend Status Conference; T/C w/DH and CO (post-conference)	1.5	\$750.00
2/13/2021	Research/draft settlement proposal to Nichols; transmit draft settlement proposal to Herlong (for review/comment); revise settlement proposal and transmit to Nichols	1.5	\$750.00
2/23/2021	Draft Status Update and emails to/from Nichols (re: Status Update)	0.6	\$300.00
2/24/2021	Review/Revise Court Status Update	0.5	\$250.00
3/8/2021	Research re: SCT decision in <i>Uzuegbunam</i> and draft/file Supplemental Legal Authority	0.75	\$375.00
3/11/2021	Review of HISD's letter; emails to Herlong; review of District Court's Memorandum/Order denying MSJ; research re: Motion for Reconsideration	3.25	\$1,625.00
3/15/2021	Research/draft Motion for Reconsideration; draft proposed Order; email to Herlong	6.25	\$3,125.00
4/1/2021	Review HISD's response to Motion for Reconsideration	0.25	\$125.00
4/5/2021	Research/draft Reply to HISD's response	0.5	\$250.00
4/16/2021	Draft/transmit to Nichols unopposed motion for extension of JPTO	0.5	\$250.00
4/19/2021	Review of Court's Order denying Motion for Reconsideration; email to/from Herlong; research re: cases cited in Court's Order and re: direct and interlocutory appeal	3.5	\$1,750.00
4/20/2021	Legal research re: direct/interlocutory appeal; draft/transmit email to Nichols (re: interlocutory appeal)	3	\$1,500.00

4/27/2021	Research/draft Motion To Certify Interlocutory Appeal; email to Nichols; review of Nichols' email (re: interlocutory appeal)	5.25	\$2,625.00
4/28/2021	Research/Revise Motion To Certify Interlocutory Appeal; draft proposed Order re: Interlocutory Appeal; T/C with and email to Herlong (re: Motion for Interlocutory Appeal)	4.75	\$2,375.00
5/11/2021	Review of HISD's Response to Motion To Certify Interloc Appeal	0.25	\$125.00
5/12/2021	Research/draft Reply to HISD Response to Motion To Certify Interloc Appeal	2.5	\$1,250.00
6/16/2021	Email to Nichols/Karson (re: JPTO)	0.1	\$50.00
6/17/2021	Review Nichols/Thompson email re: JPTO; email to Nichols/Thompson (re: JPTO scheduling; withdrawal of jury demand)	0.1	\$50.00
6/18/2021	6/18/21: Review Thompson email re: jury demand withdrawal; email to Nichols/Thompson (re: jury demand withdrawal; JPTO); research/draft Notice of Withdrawal of Jury Demand; emails to/from Herlong (re: jury demand withdrawal); research/draft JPTO, Trial Memorandum, Findings of Fact/Conclusions of Law	6.5	\$3,250.00
6/19/2021	Research/Draft Findings of Fact and Conclusions of Law; Research/Draft Trial Memorandum	4.25	\$2,125.00
6/20/2021	Research/Draft JPTO and Witness List	2.25	\$1,125.00
6/21/2021	Research/revise JPTO (re: jury demand)	0.75	\$375.00
6/22/2021	Research/draft Notice of Withdrawal of Claim for Monetary Damages	1	\$500.00

6/23/2021	Review HISD's revisions to JPTO; draft revisions to HISD's revised JPTO; research re: mootness	3	\$1,500.00
6/24/2021	Research/Revise HISD's draft JPTO; emails to and from Herlong/Thompson (re:JPTO)	3.25	\$1,625.00
6/25/2021	Review/revise JPTO filings (Trial Memorandum; Findings of Fact/Conclusions of Law); review HISD's exhibit and witness lists	6.25	\$3,125.00
7/16/2021	Prepare for docket call and attend docket call; post-docket call meeting with Herlong	1.5	\$750.00
7/17/2021	Research and prepare for deposition of Dr. Allen	2.5	\$1,250.00
7/22/2021	Preparation for Dr. Allen's deposition and deposition of Dr. Allen; preparation of Second Amended Exhibit List; email to Nichols; T/C w/Monroe (re: status)	3.5	\$1,750.00
7/25/2021	Draft direct examinations of Monroe, Allen, and Salazar	2.5	\$1,250.00
7/26/2021	Preparation for trial; Trial; post-trial conferences with Herlong and Monroe; research and draft Supplemental Authorities	11.5	\$5,750.00
7/27/2021	Revise Supplemental Authorities and file; review HISD's response to Supplemental authorities and research authorities cited therein	2.5	\$1,250.00
8/4/2021	Review Court's Memorandum and Opinion; research cases cited in Memorandum; emails to/from Herlong; email to Monroe	1.75	\$875.00
8/13/2021	Review Nichols' email (re: attorney's fees); email to Nichols (re: attorney's fees status)	0.25	\$125.00

8/16/2021	Review/redact fee/expense application and email to Nichols; emails to/from Herlong (re: fee application)	1	\$500.00
9/2/2021	Research and draft Plaintiff's Motion for Attorneys' Fees, Costs, and Expenses (including Declaration of Scott Newar)	10.25	\$5,125.00
9/3/2021	Research, draft, and edit Plaintiff's Motion for Attorneys' Fees, Costs, and Expenses (including Declaration of Scott Newar and proposed Order)	4.75	\$2,375.00
<b>Total Hours:</b>		569.25	<b>Total:</b> \$284,625.00

Candice O'Brien (paralegal) time:

\$100


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6/4/2019	Exhibits for First Amended Complaint and e-filing	2	\$200.00
6/9/2019	Production in Monroe	1.75	\$175.00
6/10/2019	Subpoenas	3	\$300.00
6/14/2019	Prepare and file motion for Expedite Hearing	2.5	\$250.00
6/17/2019	Prepare TOA, TOC and Exhibits Memorandum	4	\$400.00
6/18/2019	Emails with easy-serve and subpoena updates; Edit Memorandum	2.25	\$225.00
6/19/2019	Format Preliminary Injunction, combine/prepare Exhibits, and e-filing	3.5	\$350.00
6/20/2019	Edit Exhibit List and Exhibits ; Prepare Subpoena for Boykins	3	\$300.00
6/21/2019	Correspondence with court; Prepare subpoena: Jones; Prepare/combine exhibits	3.5	\$350.00
6/22/2019	Prepare for hearing	3.25	\$325.00
6/23/2019	Prepare for hearing	4.5	\$450.00
6/24/2019	Prepare for hearing	8	\$800.00

7/1/2019	Prepare for hearing	1.5	\$150.00
9/17/2019	Prepare/edit 5th circuit brief	5.5	\$550.00
9/18/2019	Prepare/edit brief, efilng	4	\$400.00
9/19/2019	E-filing Brief edits	2.5	\$250.00
9/23/2019	Corrected brief	2	\$200.00
9/24/2019	Brief revisions	1.5	\$150.00
9/25/2019	Discovery Services: Brief	4.5	\$450.00
10/14/2019	TOA Brief	1.5	\$150.00
10/15/2019	Prepare TOA, TOC and Exhibits for Brief	1.5	\$150.00
10/16/2019	Prepare TOA, TOC and Exhibits for Brief	1	\$100.00
10/17/2019	Prepare TOA, TOC and Exhibits for Brief	1	\$100.00
10/18/2019	Prepare TOA, TOC and Exhibits for Brief	2.5	\$250.00
10/20/2019	Reply brief print job	1	\$100.00
10/21/2019	Prep mach hearing	0.5	\$50.00
12/1/2019	Second Amended Motion TOA/TOC Declaration	4	\$400.00
12/2/2019	Edit Brief; Filing	3.5	\$350.00
12/3/2019	Hearing Prep	2	\$200.00
12/7/2019	Hearing Prep	3.5	\$350.00
12/8/2019	Hearing Prep	4.5	\$450.00
12/9/2019	Hearing Prep	3.5	\$350.00
12/10/2019	Hearing Prep and attendance	4	\$400.00
2/6/2020	E-filing with exhibits	0.5	\$50.00
2/18/2020	Prepare fees	8	\$800.00
4/7/2020	Extract ROA	2.5	\$250.00

4/8/2020	Format MSJ draft	5		\$500.00
4/10/2020	MSJ Formatting	3.5		\$350.00
4/13/2020	TOA/TOC Monroe Reply	5		\$500.00
4/14/2020	TOA/TOC MSJ and e-file Motion to exceed page limits	4		\$400.00
4/20/2020	E-file MSJ final	1.5		\$150.00
7/6/2020	Format/e-file Monroe Response	1		\$100.00
6/25/2021	Formatting and e-filing trial pleadings	8		\$800.00
7/22/2021	Amended Exhibit list; Deposition of Dr. Allen	3		\$300.00
7/23/2021	Trial Prep	6		\$600.00
7/24/2021	Trial Prep	6		\$600.00
7/25/2021	Trial Prep	9		\$900.00
7/26/2021	Trial	6.5		\$650.00
8/12/2021	Fee/Expense Calculation	3		\$300.00
8/13/2021	Fee/Expense Calculation	3.5		\$350.00
8/16/2021	Fee/Expense Calculation	2.5		\$250.00
9/3/2021	Prepare and file the Motion for Attorneys' Fees	2		\$200.00
<b>Total Hours:</b>		177.25	<b>Total:</b>	\$17,725.00

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**Expenses:**

6/13/2019	District Court Filing Fee			\$450.00
6/21/2019	Subpoena's: Cambell-Rhode and Guillory	2	\$149.50	\$299.00
6/21/2019	Easy-Serve: Subpoena's for Boykins and Jones		\$357.36	\$357.36
8/9/2019	Transcript fee re: appellate record (Kathy Metzger)			\$679.00
10/1/2019	Discovery Servies: Monroe Brief			\$410.59

10/18/2019	5th Circuit filing fee	\$505.00
11/8/2019	Discovery Services: Monroe Brief	\$133.02
4/11/2020	Payment to court reporter for transcript of 12/10/19 Preliminary Injunction hearing	\$343.10
7/22/2021	Deposition of Dr. Patrica Allen	\$597.27
7/25/2021	Trial Expenses: Trial binders, tabs and copying	\$70.00
<b>Total:</b>		<b>\$3,844.34</b>

<b>Total Invoice</b>
<b>Amount:</b> \$306,194.34

Tax ID Number  
76-0693442